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such assignment constituted maintenance and that the right was a strictly personal one under the feudal system. See COKE ON LITTLETON, §§ 347, 325 n. 1. An attempted assignment destroyed the right. *Rice v. Boston & Worcester R. Co.*, 12 Allen (Mass.) 141. But by statute in England and in many states the right is assignable with the reversion after estates for life or for years. *Scallock v. Harston*, 1 C. P. D. 106. See 1 STIMSON, AMERICAN STATUTE LAW, § 1352. And in England and a few states the possibility of reverter after a fee is devisable or assignable, though in some statutes a distinction is made between assignability before and after breach. *Pemberton v. Barnes*, [1899] 1 Ch. 544; *Yazoo & M. V. R. Co. v. Lakeview Traction Co.*, 100 Miss. 281, 56 So. 393; CONN., GEN. STAT., 1902, § 4051; CAL., CIV. CODE, §§ 1046, 1047. New York, however, holds strictly to the non-assignability of the right of entry after a fee, whether before or after breach. *Nicoll v. New York & Erie R. Co.*, 12 N. Y. 121; *Fowler v. Coates*, 201 N. Y. 257, 94 N. E. 997. See *Van Rensselaer v. Ball*, 19 N. Y. 100, 103-105. Nevertheless the majority of the court in the principal case hold that the assignment to the co-heir is valid. Although there seems to be no direct authority on this point, the distinction, it is submitted, is correct. The assignment, being to a person already having the right, is in no sense maintenance. Cf. *Russell v. Doyle*, 84 Ky. 386; *Dorwin v. Smith*, 35 Vt. 69. The common-law reason as to personal representation is also satisfied. And as a right of entry is inherently indivisible the plaintiff is clearly entitled to enforce the right as to the whole of the property. *Bowyer v. Baltimore & New York R. Co.*, 67 N. J. L. 281, 51 Atl. 781. But cf. *Cruger v. McLaurie*, 41 N. Y. 219.

EMINENT DOMAIN—WHAT PROPERTY MAY BE TAKEN—PROPERTY TAKEN OF WHICH CITY WAS GRANTOR. — A city vacated and conveyed to a railway company the fee in certain street crossings. Subsequently the city began condemnation proceedings to reobtain the crossings in order to reopen the streets. Held, that the railway company has no right to an injunction. *City of Osceola v. Chicago, Burlington & Quincy R. Co.*, 196 Fed. 777.

The power of eminent domain is a power inherent in sovereignty. *Brown v. Beatty*, 34 Miss. 227. See *Pollard v. Hagan*, 3 How. (U. S.) 212, 223. This power is vested in the legislature as the representative of the people in their sovereign capacity. *Kennebec Water District v. City of Waterville*, 96 Me. 234, 52 Atl. 774. The power of taking property by eminent domain for street or other public purposes may be delegated by the legislature to a municipality. See *Maryland ex rel. McClellan v. Graves*, 19 Md. 351, 369. Although the right of eminent domain has been vested by the people in the legislature, the power to contract away that right is not given. *Lock Haven Bridge Co. v. Clinton County*, 157 Pa. St. 379, 27 Atl. 726; *Matter of Opening of First Street*, 66 Mich. 42, 33 N. W. 15. To hold otherwise might allow the state in time to be precluded from the exercise of its ordinary and essential functions. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., 754. If a legislature or municipality having the power of eminent domain cannot expressly contract it away by special agreement, *a fortiori* the mere fact that a municipality is the grantor of the lands does not preclude it from exercising the power.

EQUITABLE ELECTION — WHETHER ONE MAY TAKE UNDER WILL IN ONE STATE AND AGAINST IT IN ANOTHER. — A married woman, owning lands in Illinois and Kansas, devised all of her property to her husband for life, with limitations over. He elected to take under the will in Illinois with full knowledge of his rights in that state, and enjoyed the lands until his death. It did not appear that he knew of his rights under the laws of Kansas. After his death, his son, as heir, claimed half of the Kansas land in fee on the theory that his father had not made a binding election in Kansas and therefore took under

the law in that state. *Held*, the son cannot succeed. *Martin v. Battey*, 125 Pac. 88 (Kan.).

It is well settled that a person cannot take a benefit under a will and at the same time assert a right that will defeat its full effect and operation. *Cooper v. Cooper*, L. R. 7 H. L. 53; *Crawford v. Bloss' Estate*, 114 Mich. 204, 72 N. W. 148. And even though a person acts in ignorance of a material fact, he cannot later assert a title against the will unless he makes restitution. *Farmington Savings Bank v. Curran*, 72 Conn. 342, 44 Atl. 473; *Watson v. Watson*, 128 Mass. 152. The same equitable principle which requires an election also denies the power to divide the will in making the election. *Crawford v. Bloss' Estate*, *supra*; *Powell's Estate*, 225 Pa. 518, 74 Atl. 421. Clearly, therefore, in the principal case the husband could not take under the will in Illinois and against it in Kansas. And since he had enjoyed all of the property for life, his son was incapable of adequately restoring the benefits received under the will. Consequently, the son could not fairly raise the question as to a valid election in Kansas. *Cf. Hawkins v. Bohling*, 168 Ill. 214, 48 N. E. 94.

EVIDENCE — OPINION EVIDENCE — COMPARISON BY NON-EXPERT OF LOST DISPUTED WRITINGS WITH GENUINE WRITINGS IN COURT. — On an issue as to the genuineness of a writing which had been lost the testimony was offered of a witness who had seen the lost writing and had compared his impression of it with admittedly genuine specimens introduced in evidence for the purpose of comparison. *Held*, that the evidence is admissible. *Cochran v. Stein*, 136 N. W. 1037 (Minn.). See NOTES, p. 167.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — OUSTING COURTS OF JURISDICTION: AGREEMENT TO SUBMIT TO TRIBUNALS OF MUTUAL BENEFIT SOCIETY. — The plaintiff's husband died during proceedings for a mandamus to reinstate him to membership in a mutual benefit society, from which he had been expelled by a tribunal of the society composed of interested parties. The plaintiff sued as beneficiary. *Held*, that the plaintiff may recover. *Wilcox v. Supreme Council Royal Arcanum*, 151 N. Y. App. Div. 297, 136 N. Y. Supp. 377.

The decisions of the tribunals of mutual benefit societies are treated as quasi-judicial, so long as the proceedings are according to the rules of the society and not illegal otherwise. *Kelly v. Grand Circle Women of Woodcraft*, 40 Wash. 691, 82 Pac. 1007. All appeals required by the society must be taken before coming to court. *Supreme Council Order of Chosen Friends v. Forsinger*, 125 Ind. 52, 25 N. E. 129. The decisions of these bodies are subject to collateral attack only when void. *Black & White Smiths' Society v. Vandye*, 2 Whart. (Pa.) 309. See *Croak v. High Court Independent Order of Foresters*, 162 Ill. 298, 44 N. E. 525. In the principal case the judgment is void because the tribunal was composed of interested parties. *Gay v. Minot*, 3 Cush. (Mass.) 352; *Templeton v. Giddings*, 12 S. W. (Tex.) 851. But see *Findley v. Smith*, 42 W. Va. 299, 305, 26 S. E. 370, 372. Even where the by-laws expressly provide against resort to the courts, such resort may nevertheless be had, and, when proper, by collateral attack. *Pepin v. Société St. Jean Baptiste*, 23 R. I. 81, 49 Atl. 387; *Whitney v. National Masonic Accident Association*, 52 Minn. 378, 54 N. W. 184. *Contra*, *Van Poucke v. Netherland St. Vincent de Paul Society*, 63 Mich. 378, 29 N. W. 863. The common law in general considers contracts which bind parties to submit finally to the decision of any tribunal other than the courts, illegal as against public policy, because the jurisdiction of the courts must not be usurped. *Baltimore & Ohio R. Co. v. Stankard*, 56 Oh. St. 224, 46 N. E. 577. *A fortiori* resort may be had where there is no express provision against it. *Supreme Lodge Order of Select Friends v. Raymond*, 57 Kan. 647, 47 Pac. 533.